



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11106124

Date: MAY 14, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a chemical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner held the position of postdoctoral research associate at the University [REDACTED] where he “investigates [REDACTED] characterization and [REDACTED] for soft materials, such as [REDACTED] membranes and [REDACTED].”

The Petitioner submitted a letter dated April 1, 2019, describing his background as a chemical engineer with a specialization in [REDACTED] batteries, sensors and solar cells. The letter also included information regarding his current and past research projects, future research plans and plans for long-term employment. He indicated that his proposed endeavor is “seeking faculty positions. . . to pursue a career in academia” and that his “future research is aimed at the further development of experimental and theoretical frameworks to address a wide range of challenges such as energy problems, water shortages, and life-threatening disorders.” He further stated that his “teaching and service goals are to 1) educate and train a new generation of researchers in chemical engineering, and to 2) generate a positive impact on [his] research community through teaching and research opportunities and volunteer work.”

A. Substantial Merit and National Importance of the Proposed Endeavor

The Director determined that although the Petitioner had established the substantial merit of his proposed endeavor, he had not demonstrated its national importance because he did not submit any of the documents requested in the Director’s request for evidence (RFE).

While we may agree with the Petitioner’s statement on appeal that the “evidence submitted to establish the national importance of the proposed endeavor ‘consists of, but is not limited to’ the evidence listed in the RFE, the Petitioner must still provide documentation which meets this portion of the first prong under the *Dhanasar* analysis.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work.⁴ The Petitioner has submitted documentation of his ongoing research and its publication, along with letters of reference, which indicate that the benefit of his proposed

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ With respect to the Petitioner’s intention to teach, while such an endeavor has substantial merit, the record does not establish that it would impact the field of chemical engineering, as opposed to being limited to the individuals he teaches. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner’s teaching activities do not meet the “national importance” element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

work, including his work with [REDACTED] membranes, may have broader implications and that the results are disseminated to other experts in his field.

As the Petitioner has demonstrated both the substantial merit and national importance of his proposed research, we conclude that he meets the first prong of the *Dhanasar* framework and withdraw the Director's determination on this issue.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation such as his curriculum vitae, academic credentials, publications, citations, and letters of recommendation.

The Petitioner contends that his education, research experience, recommendation letters from others in the field, citation record, and research funding demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

The Petitioner submitted a number of reference letters which describe his education, research and publications. While all the letters praise the Petitioner and his research, they do not provide specific examples indicating that his research has been sufficiently implemented, utilized, or otherwise affected his field, consistent with the *Dhanasar* analysis.

The Petitioner also relies on his citation record and asserts that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. First, while we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893. Second, according to Google Scholar, the Petitioner had 361 citations spread across thirteen articles. While more than half of his articles had less than ten citations each, one from 2011 had 174 citations and one from 2013 had 91 citations.⁵ From the information in the record, however, none of the papers appear to highlight or otherwise

⁵ As for the information from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, we note that the Petitioner did not indicate whether he factored in any self-citations in determining this percentile ranking. Nor is it clear whether Clarivate provides information for the field of chemical engineering, as opposed to the general engineering field information submitted. Regardless, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." Regarding the information from Microsoft Academic Statistics, the Petitioner failed to include information regarding what field, if any, the information was based upon. We would also note that, on appeal, the Petitioner provided updated information from Google Scholar which indicates that the Petitioner's "areas of research" are "materials science, [REDACTED] and chemistry."

distinguish the Petitioner's work from the other cited articles.⁶ Without more, the Petitioner has not demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

Additionally, as it relates to the Petitioner's education, while his degrees render him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

The Petitioner also points to funding received and relies on the "Acknowledgments" section of a number of papers as evidence. These articles, however, do not identify who among the authors was primarily responsible for securing the funding. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than his professor, for example) was mainly responsible for obtaining funding for the research projects.

Finally, regarding the Petitioner's comparisons of his achievements⁷ to that of Dr. Dhanasar, we explained in that decision:

Beyond his multiple graduate degrees in relevant fields, the petitioner has experience conducting research and developing computational models that support the mission of the United States Department of Defense ("DOD") to develop air superiority and protection capabilities of U.S. military forces, and that assist in the development of platforms for Earth observation and interplanetary exploration. The petitioner submitted detailed expert letters describing U.S. Government interest and investment in his research, and the record includes documentation that the petitioner played a significant role in projects funded by grants from the National Aeronautics and Space Administration ("NASA") and the Air Force Research Laboratories ("AFRL") within DOD. Thus, the significance of the petitioner's research in his field is corroborated by evidence of peer and government interest in his research, as well as by consistent government funding of the petitioner's research projects. The petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.

Here, the record demonstrates that the Petitioner has conducted and published research that is well cited, but does not establish that he is well positioned to advance his proposed research. While research adds information to the pool of knowledge in some way in order to be accepted for publication,

⁶ For example, the Petitioner provided ten "notable citations" of his work, most of which did not include the entire "references" section. In one article, the Petitioner's paper was one of at least 223 articles the authors cited.

⁷ As noted by the Petitioner, to determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. 376 (AAO 2010); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. Here, the Petitioner has not sufficiently demonstrated that his published work has served as an impetus for progress in his field, generated substantial positive discourse in the industry, or otherwise shown that it constitutes a record of success or progress in advancing his research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to the impracticality of labor certification, his expertise in the field, and the importance of his research. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.